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Forty-eighth session

SUMMARY RECORD OF THE 1137th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 1 March 1996, at 3 p.m.

Chairman: Mrs. SADIQ ALI

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Tenth, eleventh and twelfth periodic reports of Denmark (CERD/C/280/Add.1 and HRI/CORE/1/Add.58)

1. At the invitation of the Chairman, Mr. Klingenberg, Mrs. Cohn, Mr. Mikkelsen, Ms. Grønborg-Pedersen, Ms. Petersen and Ms. Holt (Denmark) took places at the Committee table.

2. Mr. KLINGENBERG (Denmark) said his Government regretted that its tenth and eleventh periodic reports had been submitted late; it was grateful for the possibility of combining them with the twelfth periodic report in a consolidated document and would make every effort to ensure that future reports were submitted on time. Upholding the principle of equality before the law was a matter of prime importance to the Danish Government, which was fully committed to protecting all persons under its jurisdiction against any form of racial discrimination through laws, regulations and other relevant measures.

3. Denmark was one of the few States parties prepared to consider communications from individuals who claimed to be victims of acts which violated the Convention's provisions. Central and local authorities were working constantly to implement those provisions for the benefit of all residents, irrespective of ethnic origin, in close cooperation with all relevant organizations and groups.

4. The CHAIRMAN invited Mr. Banton, country rapporteur for Denmark, to comment on the tenth, eleventh and twelfth periodic reports contained in document CERD/C/280/Add.1.

5. Mr. BANTON, pointed out that article 1, paragraph 1, of the Convention required the prohibition of any distinction based on race, colour, descent, or national or ethnic origin. Since section 70 of the Danish Constitution of 1952 covered only "creed or descent", he wondered whether any measures to expand that section had been taken since 1952. The laws regulating the registers of public authorities and private bodies prohibited registration of a person's racial or ethnic origin; he wondered whether those laws, not mentioned in the eighth and ninth periodic reports, would hamper ethnic monitoring designed to assess the effectiveness of measures to reduce discrimination against Danish-born persons of immigrant origin. The conclusion, by the Danish Centre for Human Rights, that in criminal and civil cases the definition of racism/racist related to racial superiority might be justified under article 4, but not with regard to obligations under articles 2, 3, 5 and 6. He also wondered whether it was ruled criminally libellous in Denmark to say that Danish society was racist.

6. With regard to article 2, it would have been helpful to have the text, or a summary, of the Folketing's decision B65 of 18 June 1992, which was said to be the main policy statement on integration. It was reassuring to learn that asylum-seekers enjoyed the general protection of the law, including provisions

against racial discrimination. With regard to the conviction of a former Minister of Justice for unlawful obstruction of immigration procedures between 1987 and 1989, he wondered whether the prosecution had alleged that his actions had been motivated by racial discrimination. He noted, too, that the independent Board for Ethnic Equality, mentioned in paragraph 8 had regretted that several ministries gave insufficient priority to furthering ethnic equality. He wondered whether the Danish authorities, when preparing their periodic reports, consulted organizations and movements of the type referred to in article 2, paragraph 1 (e), whether the Government deemed it desirable that the composition of all public agencies, such as the police force, should reflect the local community's ethnic composition, whether the law might be an obstacle to achieving that aim, and how the progress of policies in that area was assessed.

7. With regard to article 3, Denmark's ninth and twelfth periodic reports referred to instances of the application of immigrant dispersal policies by Danish municipalities. Implementation of a dispersal policy meant differential treatment, but that was not always synonymous with less favourable treatment. In his opinion, a dispersal policy could be justified under the Convention if the resultant degree of inequality was reasonable in relation to the goal pursued and the policy was acceptable to a proper tribunal. Proposals put forward by the interministerial Municipalities Committee, if implemented, might help to reduce racial discrimination, but they were of a kind which, in the case of schooling, had led parents in some countries to transfer their children to private schools. The whole matter should therefore be addressed in Denmark's next periodic report, which should also provide further information about the way in which dispersal policies were implemented with respect to local authority housing and State school admissions.

8. Regarding article 4, he wondered whether the Government was satisfied that its relevant legislation was effective, since there had been only three convictions over a six-year period of significant neo-Nazi activity. The recent amendment to the Penal Code, designed to make racial motivation an aggravating feature of an offence, was to be welcomed; but he wondered whether the difficulties mentioned in paragraphs 57 and 58 of the report meant that legislative or administrative changes were needed. He also asked whether an appeal lay against a decision not to prosecute, whether there was a right of private prosecution for offences under section 266(b) of the Penal Code, and whether account had been taken of the Committee's opinion in the case of L.K. v. The Netherlands.

9. He wondered whether Denmark was satisfied with its arrangements for monitoring local radio broadcasts which incited racial hatred, and what sentence had been passed in the case described in paragraph 56 of the report. With respect to the "due regard" clause of article 4, he agreed with the opinion expressed by the European Court of Human Rights, in its judgement in the Jersild v. Denmark case, that the clause was open to various interpretations, but that the Court's interpretation of article 10 of the European Convention was compatible with Denmark's obligations under the United Nations Convention. He proposed that the Committee should collectively affirm its agreement with that judgement.

10. With regard to article 5, he asked the Danish delegation to comment on the proportion of ethnic minorities in the prison population, the results of the inquiry into the alleged use of excessive force against foreign inmates, and the possibility of persons of minority ethnic origin being selected for jury service. Details would also be welcome about the training of police officers in the avoidance of racial discrimination, in accordance with the Committee's general recommendation XIII. He also cited press reports concerning racial attacks in contravention of article 5 (b) of which there was no mention in the twelfth report; and he asked whether the Government was planning to keep separate records of such incidents. It would be interesting to learn what use immigrants had made of the right to vote in local elections, referred to in paragraph 3 of the report, and whether the "other civil rights" referred to in article 5 (d) could be exercised without discrimination in practice as well as in law.

11. He welcomed the bill on the prohibition of unequal treatment in the labour market. With regard to professional appointments, he hoped that the next periodic report would take up the question of the criteria applied with regard to nationality, as well as discriminatory conditions in job advertisements. It was to be hoped that the proposed law would remedy the lack of procedures to protect job-seekers against discriminatory rejection. He was concerned at reports by the Board for Ethnic Equality and other bodies about the disproportionately high level of unemployment among ethnic minorities, low job security, the high incidence of work-related illness and inadequate training and advice; he noted that the Ombudsman had recently criticized the freedom of employers to refuse work to foreigners, and he sought confirmation that the new law would curb such freedom. The Government should consider the 1979 ruling by the Commission for Racial Equality in London, to the effect that asking members of an existing workforce to seek recruits could be discriminatory. It should also consider adopting measures to combat marginalization.

12. On the subject of housing, he asked whether it was unlawful for a private vendor to inform an agent that a property was not to be sold to an immigrant; on the other hand, reported instances of municipal housing associations discriminating in favour of large immigrant families because of their easier access to benefits and rent rebates might also contravene article 5 (e) (iii). With regard to article 5 (e) (iv), he noted that the Board for Ethnic Equality seemed concerned about possible discrimination in hospitals, and invited the Government to report on that subject. He also sought clarification of a report, in the Jyllands-Posten of 29 March 1994, that the Holstebro district council had been found to have acted illegally in demanding to see refugees' passports and residence permits before paying welfare benefits. In connection with the right to education and training, he asked for information about alleged cases, not mentioned in the twelfth periodic report, of parents placing their children in private schools in order to avoid a mixture of religious and ethnic backgrounds. With regard to article 5 (e) (vi), he hoped that the question of a negative image in the mass media, which could possibly lead to discrimination, would be considered in the next periodic report.

13. Referring to paragraphs 52-53 and 68-75 of the report, he asked whether Danish legislation against the refusal of service covered the imposition of a condition which was discriminatory in effect, such as the refusal to serve a

person coming from a locality where many immigrants lived. The figure of two convictions in six years reported in paragraph 52 was suspiciously low. A recent survey in Sweden found much higher rates of self-reported victimization and suggested a high rate of unreported discrimination; there was no apparent reason why it should be lower in Denmark.

14. The Danish Government's delay in meeting its obligations under article 6 of the Convention should be rectified if the bill on the prohibition of unequal treatment in the labour market came into effect. In order to assess the effectiveness of measures under the proposed new law, it would be helpful to receive information on the level of protection afforded under the existing law on the equal treatment of men and women.

15. The support given to neo-Nazi movements by certain groups of young people in Denmark cast doubt on the effectiveness of the measures taken to comply with article 7 of the Convention, as reported in paragraphs 79-82. The problem was not confined to Denmark and there was no obvious solution in sight. Imaginative ways of reaching the young people concerned might be considered, along the lines of the Swedish Government's initiative in detaching youth workers to monitor such groups.

16. Since Denmark had made the declaration provided for under article 14 of the Convention in 1985, only one communication had been received, and he asked whether there was general public awareness of the availability of the remedy.

17. He wondered whether there was any empirical evidence to support the contention in paragraph 15 of the report that outright racial discrimination was rare compared to intolerance arising from fear of social change and of strangers, since there was some evidence to the contrary. To make equality a reality, any plan of action, such as that referred to in paragraph 9, had to concern itself with both the majority and the minorities. Remedial measures should start not with the young but with the groups that practised discrimination - government officials, employers and trade union leaders. He hoped that the Danish Government would ensure that both the Committee's concluding observations and any response thereto received publicity in Denmark, for instance by distributing copies to integrationist multiracial organizations of the kind referred to in article 2.1 (e) of the Convention.

18. Mr. van BOVEN commended Denmark for making the declaration provided for in article 14 of the Convention and ratifying the amendment to article 8 on the financing of the Committee's activities. He welcomed the delegation's assurance that the next periodic report would be submitted on time and hoped that the lack of information on judicial measures would be remedied on that occasion. He trusted that the delegation would appreciate the Committee's concern about recent developments not covered by the report.

19. With regard to the implementation of article 2 of the Convention, the establishment of the Board for Ethnic Equality was a welcome development, consistent with the Committee's general recommendation XVII on the establishment of national institutions, and he looked forward to further information on the Board's activities in the future. He echoed the concern expressed in the report of the Danish Centre for Human Rights about increasingly restrictive practices in respect of family reunion for persons of

foreign origin, a trend also observed elsewhere in Europe. He drew attention to the Committee's general recommendation XIX (47), which clearly explained the continuing relevance of article 3 even in the post-apartheid era, and hoped that it would be taken into account in future reports.

20. In connection with article 4 of the Convention, questions remained about the enforcement of section 266 (b) of the Penal Code. He therefore asked for more information about the policies of law enforcement agencies, how vigilant they were and what reasons could be given for the small number of convictions. He expressed concern about reports that a Danish neo-Nazi party, the Danish National Socialist Movement, had been granted a radio broadcasting licence and had recently begun transmitting. The party was described as having an openly neo-Nazi, racist and anti-Semitic platform.

21. With regard to Mr. Banton's proposal that the Committee should collectively concur with the judgement of the European Court of Human Rights in the case of Jersild v. Denmark, he did not think it appropriate for the Committee to express an opinion on a judgement handed down by that Court.

22. Mr. BANTON (Country Rapporteur), on a point of order, said he was not proposing a pronouncement on the Court's interpretation of article 10 of the European Convention, but that the Committee should express its agreement that the "due regard" clause of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination ensured a balance of rights. Since the Court in its judgement had referred to a dichotomy of views in the Committee, he felt that it would be in order to confirm that the Committee was now unanimous.

23. Mr. van BOVEN said that the matter might be further discussed among members of the Committee. Returning to Denmark's twelfth periodic report and in connection with article 5 of the Convention, while he commended the provisions of Act No. 289, he felt that insufficient information had been given on the protection and enjoyment of economic, social and cultural rights, especially in employment, housing, welfare and education. For instance, there was evidence of a higher unemployment rate among migrants and foreign citizens than among Danish citizens. He drew attention to article 2, paragraph 2, of the Convention, requiring States parties to take special and concrete measures when the circumstances so warranted. In the case of Denmark, the circumstances did warrant such measures. He appreciated the reluctance to take compulsory measures, but suggested that incentives such as subsidies or tax exemptions might be a way of promoting those rights. In connection with article 6, he wondered whether special measures could be considered to overcome the problem of non-recourse to the ordinary courts - mainly because the procedures were expensive and time-consuming - on the part of persons of foreign origin in particular. He hoped that Denmark would take the necessary steps to implement General Assembly resolution 50/170 which encouraged States parties to ensure that the treaty bodies' reports and concluding observations were translated, published and made widely available.

24. Mr. VALENCIA RODRIGUEZ commended the introduction of legislation entitling immigrants who had resided in Denmark for three years to vote in local elections. He inquired about the results of the implementation of that provision. The ruling by the European Court of Human Rights in the

"green-jacket" case, referred to in paragraph 6 of the report, showed that the Court's opinion differed from that of the Committee, which insisted that freedom of expression should be interpreted in the light of States parties' obligations under article 4 of the Convention and could not be used as an excuse for disseminating racism and racial discrimination. Although the Committee did not have the power to impose its legal opinion on the judicial authorities of States parties, it was its duty to draw the Danish authorities' attention to that important issue.

25. The establishment of the Board for Ethnic Equality was consistent with the provisions and purposes of the Convention, and the Danish Government should be asked to keep the Committee informed about its activities. The same applied to the Committee on Employment Law set up in 1994. He requested detailed clarification of the rights not enjoyed by asylum-seekers and citizens of the former Yugoslavia with special legal status under the temporary protection scheme. He also sought confirmation that ethnic Greenlanders enjoyed the same social and economic rights as Danish citizens.

26. More detailed information was required than that given in paragraphs 22 and 23 about the activities of the Danish Refugee Council and the new initiatives planned. The information provided in paragraphs 30-55 on the implementation of article 4 of the Convention demonstrated Denmark's serious commitment to fulfilling its obligations. Both the wording and the interpretation of section 266 (b) of the Penal Code were consistent with article 4 (a) of the Convention. The scope of criminal liability under section 266 (b), as described in paragraph 34, was particularly commendable. With reference to paragraph 42, he asked whether the Parliamentary Ombudsman had exercised his power to order the prosecuting authorities to carry out a preliminary investigation or institute proceedings before the ordinary courts in cases of violation of the prohibition of racial discrimination. If so, information on such cases was requested.

27. He welcomed the fact that Danish legislation on racist organizations complied with the requirements of article 4 (b) of the Convention. He was interested in the cases brought under section 132 (a) (1) of the Penal Code and hoped that the Government would keep the Committee informed about current and future cases. He noted that the Act on the prohibition of discrimination (No. 289) provided for penalties against non-profit-making undertakings which refused to serve people on racial grounds. He wondered what action was taken if such an act of discrimination occurred in a profit-making business and where the difference lay. Again, he looked forward to hearing more details, particularly with regard to the meaning of the phrase "on the same conditions as others" in section 1 of the Act. While accepting that verbal or written statements made within a general political framework, as well as serious scientific research, should not be actionable, he stressed that the courts should consider the intention behind such statements; the line between the acceptable and the unacceptable could easily be blurred and the courts should show the utmost discretion in judging such cases.

28. With regard to article 6 of the Convention, he was confident, on the basis of paragraphs 77 and 78, that Denmark was fulfilling its obligations. On article 7, too, he noted that the Government planned to include more comprehensive instruction on such issues as racial discrimination, intolerance

and human rights in State education curricula. He hoped that the next report would explain what measures had been taken in that respect. He also welcomed the fact that the Danish Red Cross published a newspaper concerning asylum-seekers.

29. Mr. RECHETOV gave the report high praise. It not only provided details of the Constitution and other legislation, but specified the criteria on which they were based; the relevant case law was also quoted. He applauded the fact that new immigrants benefited from comprehensive integration programmes, even to the extent of being authorized to vote in local elections. He was, however, concerned that the desire not to inhibit freedom of expression had made it possible for expressions of racial hatred to go unpunished. There should be no question of freedom of expression in such cases. He asked what action the Government had taken to disseminate the Convention and to make the public aware of the existence of the Committee. He also wondered when the Convention had been translated into Danish. Some countries translated it into their own language immediately upon ratification, while others dragged their feet.

30. Noting that, according to document HRI/CORE/1/Add.58, paragraph 14, life expectancy in Greenland was substantially lower and infant mortality substantially higher than in the rest of the country, he inquired into the reasons for that situation. He wondered whether nuclear weapons had at any time been stationed in Greenland or whether nuclear testing had been carried out on land that was far from European Denmark.

31. Mr. GARVALOV, while commending Denmark's report, said he felt some unease about the phrase "third country" in paragraph 11. People from Eastern Europe were extremely sensitive to the restrictions implied by such a term. He also feared that intolerance, a potentially subtle form of racial discrimination, could mar the otherwise admirable developments mentioned in paragraph 15. He welcomed the setting up of the Board for Ethnic Equality.

32. The Committee had had occasion to impress upon some States parties the mandatory requirements of article 4 of the Convention. As Denmark had never questioned those requirements, he had been surprised to read in paragraph 30 of the report that any person disseminating racially inflammatory information "might" be liable to various sanctions. That provision ought to be strengthened. He also asked whether the associations mentioned in paragraph 43 included those that propounded racism or ideas of racial superiority. With regard to the dissolution of such associations, he applauded the provisions mentioned in paragraph 45, and in that connection he asked whether an association had to register with the courts when it was first established.

33. It appeared that what little racial discrimination existed in Denmark was often directed at Turks, and he wondered whether the delegation could explain why. Lastly, he considered that the report should have contained more information on action taken by Denmark in respect of articles 6 and 7 of the Convention.

34. Mr. YUTZIS urged Denmark to submit its future periodic reports in good time. The Committee on the Rights of the Child had pointed to the need for

Denmark to improve the conditions of interviews with child asylum-seekers and to grant such children automatic entitlement to health care. Similarly, Denmark should attempt closely to monitor the situation of foreign adopted children.

35. One cause for concern in the report was the reference, in paragraph 15, to "the kind of intolerance which springs from a general and often irrational fear of social change and strangers". That statement required elucidation. Clarification was also required of the reference in paragraph 32 to "scientific theories on racial, national or ethnic differences", which did not "fall within the scope of the offences described in section 266 (b) of the Penal Code". An explanation of how that tied in with the so-called "green-jacket" case would be welcome. Given the link established in the same paragraph between such theories and the issue of freedom of expression, the question arose of the limits, if any, to the dissemination of possibly racist scientific theories.

36. The report failed to mention whether the police and prison officials were given training in race relations.

37. Mr. de GOUTTES commended Denmark for having made the optional declaration under article 14 of the Convention. The report provided comprehensive details of criminal legislation to show that Denmark was complying with article 4 of the Convention. With regard to the Jersild v. Denmark case, the Committee was not in a position to take sides on decisions taken by the European Court of Human Rights.

38. He welcomed the reference in paragraph 75 of the report to the fines that could be imposed on legal entities and companies found guilty of racial discrimination. Other States parties should be urged to adopt similar penalties. The information on court rulings in cases involving racial discrimination seemed to show that the Turkish community was particularly vulnerable, and that was cause for concern.

39. An account of the activities of the Board for Ethnic Equality would be welcome, and he asked whether it was fitted to publicize the work of the Committee. Information should also be provided on the activities of the Committee on Employment Law. Regarding the constitutional provision to the effect that associations that incited or engaged in violence could be dissolved by a judgement of a court of law, he asked how the provision was applied in practice, particularly in respect of the "green-jacket" case.

40. Mr. FERRERO COSTA said he did not agree that members of the Committee, as independent experts, should not discuss the decision of the European Court of Human Rights in the Jersild v. Denmark case.

41. Mrs. ZOU Deci deplored the seriousness of some of the cases of racial harassment mentioned in the report. She asked whether immigrants and refugees were treated as an ethnic group after they had become citizens of Denmark and whether they could maintain their linguistic and religious traditions.

42. Mr. CHIGOVERA said that he would have liked to see more information on case law in the report. He invited the delegation to comment on whether

racial barriers prevented racial minorities from approaching the police with complaints; whether minorities were often ignorant of their rights and thus deterred from reporting cases of racial discrimination; and whether the police and law enforcement agencies were reluctant to investigate the complaints they received. It should also comment on the attitude of State officials to a directive that section 266 (b) should be used only in particularly serious situations.

43. The CHAIRMAN, speaking as a member of the Committee, requested information on a case dating back to 1953, when claims for compensation had been lodged by residents after the establishment of a United States military presence in Greenland. She also wondered if United Nations treaties were circulated in Greenland.

The meeting rose at 6 p.m.